

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL JOHN COSS, DAVID L. MAJETTE, and
RONALD L. SHARP

Appeal No. 2002-0299
Application No. 08/927,382

ON BRIEF

Before KRASS, JERRY SMITH, and RUGGIERO, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-26, which are all of the claims pending in the present application.

The disclosed invention relates to a system and method for implementing a computer network firewall by applying a security policy represented by a set of access rules for a given communication packet.

Appeal No. 2002-0299
Application No. 08/927,382

Claim 1 is illustrative of the invention and reads as follows:

1. A method for validating a packet in a computer network, comprising the steps of:

deriving a session key for said packet;

selecting at least one of a plurality of security policies as a function of the session key; and

using the selected at least one of the security policies in validating said packet.

The Examiner relies on the following prior art:

Shwed	5,606, 668	Feb. 25, 1997
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Claims 1-26, all of the appealed claims, stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Shwed.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs,¹ the final Office action, and Answer for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner, the arguments in support

¹The Appeal Brief was filed July 17, 2000 (Paper No. 13). In response to the Examiner's Answer dated September 26, 2000 (Paper No. 14), a Reply Brief was filed November 30, 2000, (Paper No. 15), which was acknowledged and entered by the Examiner as indicated in the communication dated December 15, 2000 (Paper No. 16).

of the rejection, and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-26. Accordingly, we affirm.

Appellants nominally indicate (Brief, page 3) that the claims on appeal stand or fall together as two separate groups. For the first group including claims 1-15 and 17-26, we will select claim 1 as the representative claim and claims 2-15 and 17-26 will stand or fall with claim 1. Claim 16, grouped and argued separately by Appellants, will be considered independently. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Only those arguments actually made

Appeal No. 2002-0299
Application No. 08/927,382

by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered (see 37 CFR § 1.192(a)).

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1051-52, 189 USPQ 143, 147 (CCPA 1976).

With respect to representative claim 1, Appellants' arguments in response to the obviousness rejection assert that the Examiner has failed to establish a prima facie case of obviousness since all of the claimed limitations are not taught or suggested by the applied prior art references. In particular, Appellants contend (Brief, page 5) that, in contrast to the language of claim 1 which requires the selection from a plurality

of security policies, Shwed merely selects from plural rules in a single rule set or security policy. Appellants amplify their arguments by asserting (Brief, page 6) that, unlike Shwed, " . . . the claimed invention is directed toward *rule set* selection not just *individual rule* selection" and also that ". . . Shwed only refers to 'multiple security rules' . . . not multiple sets of rules."²

After careful review of the Shwed reference in light of the arguments of record, however, we are in agreement with the Examiner's position as stated in the Answer. In our view, the Examiner's assertion (Answer, page 3) that the claimed "security policies" correspond to Shwed's security rules is a reasonable interpretation of the claim language when considered in light of Appellants' specification. We note that it is a basic tenet of patent law that claims are to be given their broadest reasonable interpretation consistent with the description in the specification.

²In the obviousness rationale set forth by the Examiner (final Office action, page 3), it is asserted that the extraction of packet data to determine the applicability of a security rule in Shwed would be obviously recognized and appreciated by the skilled artisan as corresponding to the claimed "session key." Appellants' arguments in the Briefs do not dispute this assertion and we find no error in the Examiner's stated position.

With the above discussion in mind, we have reviewed Appellants' specification for guidance as to the proper interpretation of the claim language and we find little enlightenment as to how to properly interpret the "security policies" language of representative claim 1. Appellants' argument (Reply Brief, page 2) in support of their position as to the proper interpretation of the language of claim 1 refers to the portions of their specification at page 5, lines 1 and 2 and lines 23 and 24. We do not find this persuasive. The excerpt at page 5, lines 1 and 2 merely states that a single firewall can support multiple users where each user might have a separate security policy.

Similarly, in our view, the portion at page 5, lines 23 and 24 which states that "security policies can [our emphasis] be represented by sets of access rules," rather than supporting Appellants' asserted restrictive interpretation of "security policies," instead suggests a broader and more inclusive interpretation. Given the paucity of description in Appellants' specification as to the nature of a "security policy," we can only reach the conclusion that the "security policies" language of representative claim 1 simply does not require the interpretation asserted by Appellants in the Briefs. In our

opinion, we find no error in the Examiner's interpretation of the claimed "security policies" as corresponding to Shwed's security rules in which each rule can be considered a security policy, especially in view of the fact that there is no proscription against a rule set or security policy having only one rule in the set.

For the above reasons, since it is our opinion that the Examiner's prima facie case of obviousness has not been overcome by any convincing arguments from Appellants, the Examiner's 35 U.S.C. § 103(a) rejection of representative independent claim 1, as well as claims 2-15 and 17-26 which fall with claim 1, is sustained.³

We also sustain the Examiner's 35 U.S.C. § 103(a) rejection of independent claim 16, grouped and argued separately by Appellants. Although claim 16 is directed to the feature of permitting modification of domain access rules only by an administrator for a given domain, Appellants' arguments are an extension of those made previously with regard to claim 1. In

³While Appellants have grouped (Brief, page 3) claims 1-15 and 17-26 as a single group which stand or fall together, the Brief at pages 8-10 briefly discusses the merits of all of the claims. The extent of these arguments, however, relies on Appellants' asserted interpretation of "plural security policies" as multiple sets of rules, an assertion which we have found to be unpersuasive as discussed supra.

Appeal No. 2002-0299
Application No. 08/927,382

Appellants' view (Brief, pages 10 and 11; Reply Brief, page 7), since Shwed's system involves selective placement of packet filters where each filter has a single set of rules in contrast to Appellants' system which has separate rule sets (security policies) in a single firewall, Shwed has no disclosure of independent administration of respective security policies as claimed. Appellants go on to assert that Shwed's system suggests a single administrator for the entire single rule set rather than a separate administrator for each domain.

It is our view, however, that the requirements of appealed claim 16 do not distinguish over the system described by Shwed at least in the manner broadly claimed by Appellants. Even assuming, arguendo, that Appellants' suggestion that Shwed has a single administrator for all domains is correct, this single administrator would also be an administrator for a given domain as claimed.

In summary, we have sustained the Examiner's 35 U.S.C. § 103(a) rejection of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-26 is affirmed.


Appeal No. 2002-0299
Application No. 08/927,382

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED


ERROL A. KRASS)
Administrative Patent Judge)


JERRY SMITH)
Administrative Patent Judge)


JOSEPH F. RUGGIERO)
Administrative Patent Judge)

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Appeal No. 2002-0299
Application No. 08/927,382

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